able to cite a single case sustaining his contention. He does refer to a number of cases, but in all of them the pain may be viewed as an accompaniment or part only of some substantial injury entitling the party to compensation." Of course that is exactly what the text-writer says, if "substantial" be left out; and if that adjective be emphasized, the statement is untrue; as in many of the recent telegraph cases the only large element of damages is mental suffering.

The court then indulges in some more general criticisms. "How much mental suffering shall be necessary to constitute a cause of action? Let some of the courts favoring recovery measure out the quantity." The courts all admit that an infinite quantity of suffering of any kind cannot in itself constitute a cause of action. It seems hopeless to hammer at a distinction so clear as the difference between the proposition that the infringement of an actionable right should be compensated by damages for all the proximate injury of any kind resulting to the person whose right is infringed, and the untenable proposition the court mixes up with it, that suffering alone can constitute a cause of action. The Georgia court seems to have seen this distinction just clearly enough to explain how completely they misunderstood it: "It is said there must be an infraction of some legal right, attended with mental suffering, for this kind of damages to be given. If this be true law, why is not the mental distress always an item to be allowed for in the damages?" Why not indeed? That is just what the new rule is. "Throwing away the lame pretence of basing recovery for mental suffering upon an otherwise harmless transgression, and stripping it of all false form and confusing technicality, it is manifest that to allow such a recovery is, in real substance, an effort to protect feeling by legal remedy." Truly it is; but as long as our law is what it has always been, we must grope with such "confusing technicality" as the difference between the presence and the absence of a right infringed. The failure of the court to seize this concept at a time when it is so important, so much noticed, and so clearly explained in the authorities cited by the court itself, is matter for surprise. It is perhaps unlikely that these elaborate *dicta* will be followed in Georgia. The nearest prior case in the State is one allowing damages for physical suffering. *Cooper* v. *Mullins*, 30 Ga. 146.

THE TRUE LIABILITY OF A MANUFACTURER FOR LATENT DEFECTS. — The Supreme Court of Minnesota have recently decided, in the case of *Schubert* v. *J. R. Clark Co.*, 5 N. W. Rep. 1103, that a manufacturer who, through retail merchants, puts on the market an article which to his knowledge contains latent defects liable to cause injury, must answer for injury caused by his negligence to one into whose hands the article naturally comes for use, even though there be no contract relation between the latter and the manufacturer.

On this question, both in England and the United States, there is a peculiar conflict between authority and principle. In the much overworked case of *Winterbottom* v. *Wright*, 10 M. & W. 139, the Court of Exchequer do not say that if the declaration had stated a breach of duty to the plaintiff, rather than a breach of a contract with a third person, the decision would have been in favor of the defendant. In the case of *George* v. *Skivington*, L. R. 6 Exch. 1, the judges simply

extended the right of action for a tort to a stranger, to the contract of sale, provided he was specifically named in the contract. They should either have gone farther, or not so far; the result is sound, but the reasoning illogical.

In the United States, the case of *Thomas* v. *Winchester*, 6 N. Y. 397, is a leading one; but in it, as in the English cases, the underlying theory is thoroughly unsatisfactory. The decision proceeds on the ground that the defendant's negligence put human life in imminent danger. This may be advanced as an argument for requiring a greater degree of care than if the article manufactured and sold were not so dangerous, but it certainly is no reason for limiting the class of persons to whom that care is owed.

In this misleading state of authority it has been suggested that the rule of *George* v. *Skivington* should be extended to injured persons not specifically in the vendor's mind at the time of sale, provided such persons were members of the class by whom the vendor intended the article to be used, or by whom he might reasonably have contemplated that the article was likely to be used. The decision in *Schubert* v. *Clark* will be welcome to those to whom this seems the only reasonable and logical ground on which to rest the cases.

A WIFE'S RIGHT TO BE MISTRESS OF A HOME. — The case of *Shinn* v. *Shinn*, 24 Atl. Rep. 1022, has a head-note suited to interfere with the hopes of young lawyers of larger heart than practice. Mary B. Shinn filed, in the New Jersey Court of Chancery, a bill for support against her husband. Two weeks after his marriage Mr. Shinn had imported his bride into the home of his parents, a house already equipped with his father, mother, brother, sister, nephew, and niece. In this dwelling the young couple had a well-appointed bedroom, a piano in the parlor, and two seats at the family board. After a year's experience the wife removed herself and child to the home of her aged grandfather, alleging ill-treatment by her husband and family. There is no proof of this; and the result of the slight evidence seems to be that there was nothing beyond a general unpleasantness, in which the husband sympathized with his family. In the wife's brief correspondence with her husband after her departure, her only complaint is that she is not mistress of the house. Her husband offers, with natural coolness, to take her back; which she refuses, unless he will furnish her a house of her own, even if it consists of no more than two rooms.

After the complainant had rested her case, Mr. Shinn expressed willingness to provide a home. The further hearing was suspended; but when the Vice-Chancellor examined the new dwelling he decided that such a barely furnished shanty was a mere subterfuge, in the case of a man with circumstances as comfortable as those of Mr. Shinn. So Mr. Shinn is to pay alimony.

The head-note reads: "1. Every wife is entitled to a home corresponding with the circumstances and condition of her husband, over which she shall be permitted to preside as such wife, and it is the duty of the husband to furnish such home.

"2. A house over which others have entire control, and in which the husband and wife reside as boarders simply, is not such home."